doing he had an independent conception of the way to accomplish that purpose.

"It would be unreasonable to give one who holds himself out as a manufacturer of machines, castings, and other constructions for others, the advantage of position in a claim of invention in any such construction over him who ordered and paid for it; and it is but just that in establishing such a claim he should be charged with the burden of proving that he had not received the general plan or conception from his customer and merely perfected it."

CONSTITUTIONAL LAW—POWER OF LEGISLATURE TO PRESCRIBE RULES OF EVIDENCE—MAKING CONVEYANCE BY PERSON INDEBTED PRIMA FACIE EVIDENCE OF INTENT TO DEFRAUD CREDITORS.—A statute of Michigan (Public Acts 1897, No. 99), declares "That in all suits begun or hereinafter to be begun by the filing of bills in aid of execution, the complainant shall make a prima facie case by introducing in evidence the judgment against the principal defendant, the execution with the levy or levies thereon endorsed and proof of the conveyance or conveyances complained of. The burden of proof shall then be upon the judgment debtor, or the person or persons claiming through or under him, or the person or persons who, it is claimed, are holding property in trust for said judgment debtor, to show that the transaction or transactions are in all respects bona fide, or that such person or persons are not holding as a trustee, or trustees, of said judgment debtor."

In *Crane* v. *Waldron* (1903), — Mich. —, 94 N. W. Rep., the validity of this legislation was sustained by a divided court. The position of the majority is shown by the following extract: "The power of the legislature to prescribe rules of evidence is undoubted. When one is in debt and deeds all of his property subject to execution to another, who has no visible property, it cannot be said that there is no evidence tending to show fraud. It was within the legislative power to say that these facts shall be prima facie evidence of a fraudulent intent, making it necessary for the persons charged with fraud to give some testimony to the contrary. COOLEY'S CON. LIM., 457; *Gruner* v. *Brooks*, 8 D. L. N. 79; *Molitor* v. *Robinson*, 40 Mich. 200; *Buhl Iron Works* v. *Teuton*, 67 Mich. 623; *Hatch* v. *Fowler*, 28 Mich. 205; *Webster* v. *Bailey*, 40 Mich. 641; *Cooper* v. *Brock*, 41 Mich. 488; *Kipp* v. *Lamereaux*, 81 Mich. 299; *United States* v. *Lee Huen*, 118 Fed. Rep. 442."

Grant, J., filed a vigorous dissenting opinion, in which Justice Moore concurred. Their position was that the statute did more than merely to change a rule of evidence: "It deliberately attempts to make a presumptively honest act a presumptive fraud. It deals with facts, not with evidence. It does not take up some rule of evidence and change it. The execution of a deed, though the grantor be in debt, is not of itself evidence of fraud. There always has been, and always ought to be, some other facts connected with it which tend to show a fraudulent intent. Evidence is defined to be any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion, affirmative or disaffirmative, of the existence of some other matter of fact: BEST ON EV., Sec. 11."

Such a statute, declared the dissenting judges, although perhaps not forbidden by the express language of the constitution, is violative of fundamen-

tal rights. "There are, however, some things the legislature cannot do, although not prohibited by the constitution, and the law books are replete with such cases. Some things are so repugnant to the principles of our government and to reason and common sense, that the legislature cannot enact them into valid laws. The legislature cannot declare presumptively honest citizens to be presumptively dishonest; or the daily and presumptively honest transactions of life to be presumptively fraudulent transactions, under the thin guise of a change in the rules of evidence. Every citizen under our constitution is entitled to the presumption of honesty in his daily transactions, and he who attacks his honesty is bound to prove his dishonesty and his fraud, before he can deprive him either of his liberty, his property, or his good name." It is also in violation of express constitutional provisions because it fails to provide that "due process of law" to which every citizen under our constitution is entitled.

DECORUM OF ATTORNEY IN ARGUMENT.—PROPRIETY OF APPEALS TO THE PATHETIC OR SENTIMENTAL.—It was some time ago judicially determined that it is not reversible error for counsel to weep before the jury. In a recent case in Iowa—*State* v. *Burns* (1903), — Iowa —, 94 N. W. Rep. 238, it is held not error that counsel in his argument resorted to pathos in his endeavor to sway the feelings of the jury. "Within reasonable limits," said the court, "the language of counsel in argument is privileged, and he is permitted to express his own ideas in his own way, so long as they may fairly be considered relevant to the case which has been made. No lawyer has the right to misrepresent or misstate the testimony. On the other hand he is not required to forego all the embellishments of oratory, or to leave uncultivated the fertile field of fancy. It is his time-honored privilege to—

> 'Drown the stage in tears,
> Make mad the guilty and appall the free,
> Confound the ignorant and amaze, indeed,
> The very faculties of eyes and ears.'

"Stored away in the property room of the profession are moving pictures in infinite variety, from which every lawyer is expected to freely draw on all proper occasions. They give zest and point to the declamation, relieve the tediousness of the juror's duties, and please the audience, but are not often effective in securing unjust verdicts. The sorrowing, 'gray-haired parents' upon the one hand, and the broken-hearted 'victim of man's duplicity,' upon the other, have adorned the climax and peroration of legal oratory from a time 'whence the memory of man runneth not to the contrary,' and for us at this late day to brand their use as misconduct would expose us to just censure for interference with ancient landmarks. See *Dowdell* v. *Wilcox*, 64 Iowa 724, 21 N. W. 147."

LIABILITY OF UNITED STATES FOR INJURY FROM ELEVATOR IN ITS PUBLIC BUILDINGS — IMPLIED CONTRACT TO OPERATE SAFELY — CASE "SOUNDING IN TORT."—By an act of congress approved March 3, 1887 (U. S. Comp. Stat. 1901, p. 752) provision is made for the adjudication of "all claims founded upon the constitution of the United States, or any law of congress